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Attorneys for Defendants
HSBC MORTGAGE CORPORATION (USA) AND
HSBC BANK USA, N.A.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Philip Wong, Frederic Chaussy, and Leslie Marie Shearn, individually, on behalf of all others similarly situated, and on behalf of the general public,

Plaintiffs,

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HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive.

Defendants

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF MICHAEL J. COYNE
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR CONDITIONAL CERTIFICATION,
PRODUCTION OF UPDATED CLASS
LIST, AND PARTIAL SUMMARY
JUDGMENT**

Date: February 8, 2008
Time: 9:00 a.m.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

Complaint Filed: June 29, 2007 (Amended)
Trial Date: Not Yet Set

1 I, Michael J. Coyne, hereby declare and state:

2 1. I have personal knowledge of the facts set forth below. If called as a witness,
 3 I could and would testify to the following:

4 2. I am employed by HSBC Mortgage Corporation (USA) as a Vice President
 5 and Retail Mortgage Manager. I have worked for HSBC Mortgage since August 1995. The name of
 6 the Company was Marine Midland Mortgage when I started, but the name changed to HSBC
 7 Mortgage about ten (10) years ago.

8 3. I manage all the loan officers employed by HSBC Mortgage in Rockland
 9 County, Orange County and Sullivan County, in the state of New York. Currently, there are
 10 fourteen (14) loan officers and two (2) sales managers in my region in addition to me.

11 4. The sales managers, which were formerly referred to as Retail Team Leaders,
 12 directly supervise the loan officers and have significant supervisory authority. They are responsible
 13 for providing training and guidance to loan officers and are also involved in the hiring process and
 14 disciplinary decisions. Peter Malone, who I am informed has opted to become involved in this
 15 lawsuit, was formerly employed as a team leader in my region.

16 5. My employer is HSBC Mortgage Corporation (USA), which is also the
 17 employer of all the loan officers I manage. When I hire loan officers, I make it clear to them that
 18 their employer will be HSBC Mortgage Corporation (USA) and not HSBC Bank U.S.A., N.A.
 19 ("HSBC Bank"). HSBC Bank is a separate company. HSBC Mortgage Corporation (USA) is listed
 20 as the employer on my business card and on the business cards of all the loan officers that I manage.
 21 HSBC Mortgage Corporation (USA) is also listed as the employer on our W-2 forms and our
 22 paychecks come from HSBC Mortgage.

23 6. In this region, HSBC Mortgage Corporation (USA) has three (3) physical
 24 offices, although the loan officers can do their work anywhere they want. There are HSBC
 25 Mortgage offices in Nyack, New York; Tappan, New York; and Highland Falls, New York. The
 26 physical offices are spaces that HSBC Mortgage Corporation (USA) rents from HSBC Bank U.S.A.,
 27 N.A.

1 7. The loan officers in my region have no set work hours. They may work
 2 whenever they want. They also have no minimum or maximum hours they must work. They choose
 3 how much they work.

4 8. In addition, the loan officers in my region can work anywhere. They choose
 5 where they want to meet with clients and potential clients. The locations of meetings can be
 6 anywhere.

7 9. I treat my loan officers like independent contractors and tell them their job is
 8 like being self-employed. I even allow them to make their own advertisements if they want as long
 9 as they are approved by HSBC Mortgage Corporation (USA) marketing department.

10 10. The loan officers in my region are very mobile. They all have cell phones
 11 they can use to contact clients from anywhere. However, they do not have Blackberries with email
 12 capability.

13 11. There are seventeen (17) branches of HSBC Bank in this area. When bank
 14 customers ask about mortgages, bank employees usually refer the customer to a loan officer with
 15 HSBC Mortgage Corporation (USA).

16 12. It is up to the regional manager how to distribute referrals that HSBC
 17 Mortgage receives from branches of HSBC Bank. My system for assigning who gets the referrals
 18 from which bank branch is to assign each loan officer one (1) or two (2) branches. I consider a bank
 19 branch assignment to be a reward to loan officers. The bank branches are an easy source of
 20 business. For this reason, I give some of the top producing loan officers more than one (1) branch. I
 21 am now hiring new loan officers. New loan officers will not even get one (1) branch as a referral
 22 source until they earn that opportunity.

23 13. When I "assign" the bank branches, I tell loan officers that they are supposed
 24 to use the bank branch as a referral source. Loan officers are not supposed to stay at the bank
 25 branches all day waiting for customers or work from the bank branches. I tell loan officers that they
 26 should stop by the bank branch once a week and make sure the bank employees know who they are
 27 and have their business card. Loan officers are just supposed to develop a relationship with key

1 bank employees, not sit in the branches all day, so that the bank employees will call the loan officer
 2 from HSBC Mortgage Corporation (USA) when a bank customer asks about mortgages.

3 14. The loan officers can travel to the bank branches to meet with clients if they
 4 want. Loan officers are paid for their mileage for traveling to the bank branches, but not when
 5 traveling from their house to the HSBC Mortgage Corporation (USA) offices.

6 15. If a loan officer is sitting at a bank branch all day waiting for customers, that
 7 loan officer is not properly doing his or her job. I do not want my loan officers to stay at the bank
 8 branches. I want them on the road, out in the field, looking for mortgage clients from many sources.
 9 I tell the loan officers that they are also supposed to be out looking for clients from sources other
 10 than HSBC Bank, such as realtors, attorneys and accountants. I also suggest that they get involved
 11 with community or trade organizations to make connections, but this is just a suggestion for getting
 12 more business and not a requirement.

13 16. The "HSBC" brand name is very well known in this area and potential
 14 customers often look up HSBC Mortgage Corporation (USA) on the Internet or in the phone book
 15 and call the number listed for HSBC Mortgage Corporation (USA) on their own, without any loan
 16 officer initiating contact. The published number, which is also listed in mailings that are sent to the
 17 public, rings through to one of our physical offices. I give my loan officers the opportunity to get
 18 business by answering the office phone for a day. The rule is that the loan officer who answers the
 19 phone gets all the business that comes in that way on that particular day, unless the person who calls
 20 asks for a particular loan officer by name. I call this phone time "up time." It is completely
 21 voluntary whether loan officers want to take advantage of this easy way to get business. Loan
 22 officers can opt-out of having any "up time" if they want. I usually assign each loan officer who
 23 wants "up time" one to two days per month when they are entitled to answer the main phone line.
 24 Loan officers in Orange County can transfer the calls that come in to their cell phones if they do not
 25 want to stay in the office. In the other offices in my region, the phone rings a lot, so it does need to
 26 be answered from the office.

27 17. Loan officers in my region also have the opportunity to attend community
 28 events, such as first time homebuyer seminars. It is not mandatory for loan officers to attend any

1 event. Loan officers are also notified about new housing developments from time to time, so they
 2 can try to make connections with the developers and become an approved mortgage provider for the
 3 housing development.

4 18. The loan officers in this region do extremely well. There have been loan
 5 officers who closed over \$50 million in loans in a single year, although that was in 2004 when the
 6 real estate market was doing really well. Most loan officers in this region make more than
 7 \$100,000.00 per year.

8 19. Premier loans are not very common in this region. In this region, HSBC
 9 Mortgage Corporation (USA) sells mostly what I call "niche products," which are loans of lower
 10 amounts that are only available to moderate or low income buyers or people who are buying a home
 11 in a certain area. The most common mortgages in this region are: (1) lower interest mortgages for
 12 low and moderate income people that are subsidized by the State of New York Mortgage Agency
 13 (SONYMA); (2) HSBC Mortgage Corporation (USA) Community Works loans offered pursuant to
 14 the federal Community Reinvestment Act, which are available to home buyers whose income is
 15 below a certain level or who are buying in a minority concentrated area; and (3) mortgages
 16 subsidized by the Federal Housing Administration (FHA) that have lower rate advantages for people
 17 who need help buying a home.

18 20. I hold monthly meetings for loan officers. I decide what topics to cover at
 19 these meetings. I choose topics that I believe will help people sell loans in this region. Loan officers
 20 also receive training on topics such as the local housing market and the features of the loans we
 21 usually sell in this area. I sometimes have guest speakers, such as realtors and attorneys, speak at the
 22 staff meetings. I have also brought in a representative from SONYMA to talk about that state
 23 agency's loan programs.

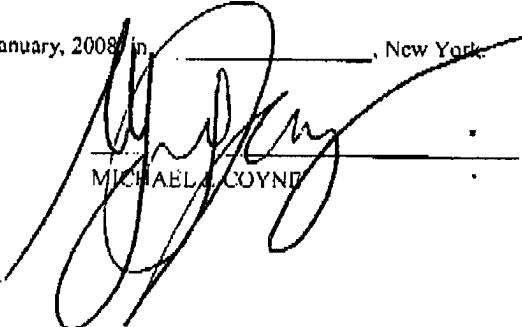
24 21. When I hire loan officers in this region, the standard length of the forgivable
 25 draw (minimum amount of pay) that the loan officers receive is six (6) months. However, I am not
 26 required to always provide six (6) months of a forgivable draw. It could be more or less, depending
 27 on various factors, such as the person's book of business, their experience, and whether they choose
 28 to negotiate for a longer forgivable draw period.

22. Along with my sales managers, I am responsible for the discipline of loan
2 officers. My sales managers and I decide when it is time for someone to be written up because of
3 low production. I usually provide verbal counseling on more than one occasion before issuing a
4 written warning to a loan officer. I try to talk to loan officers about their performance and make
5 suggestions for improvements before they fall below the minimum production expectation. There
6 are company guidelines for when a loan officer should be terminated for low production. However,
7 if I see that someone is trying hard, I will fight to keep that person on and will often give them
8 another chance.

9 23. At least two loan officers in my region told me they have already received
10 notice of this lawsuit from the Plaintiffs' counsel. One of them said he threw away the notice
11 because he did not want to be involved in this lawsuit.

12 I declare under penalty of perjury under the laws of the State of New York and the
13 United States of America that the foregoing declaration is true and correct to the best of my personal
14 knowledge.

15 Executed this 18th day of January, 2008 in _____, New York.

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17 MICHAEL J. COYNE
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